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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re D.C., a Person Coming Under
the Juvenile Court Law.**

**THE PEOPLE OF THE STATE
OF CALIFORNIA,**

Plaintiff and Respondent,

v.

D.C.,

Defendant and Appellant.

A154357

**(Sonoma County
Super. Ct. No. 38997J)**

D.C. (Minor) appeals from his commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities (the DJF).¹ He argues there was no evidence a DJF commitment would likely benefit him and the juvenile court failed to consider less restrictive alternatives. We disagree and affirm.

¹ As of July 1, 2005, the California Youth Authority became known as the “Department of Corrections and Rehabilitation, Division of Juvenile Facilities.” (Welf. & Inst. Code, § 1710, subd. (a).) We treat references to the California Youth Authority or the Division of Juvenile Justice as references to the DJF.

FACTUAL AND PROCEDURAL BACKGROUND

On September 27, 2017, at approximately 7:00 p.m., officers responded to a telephone call regarding a burglary in progress.² The officers detained Minor inside a house. The officers located a large bowie-style fixed blade knife, a backpack, and a baseball bat.

The 17-year-old victim was located upstairs. She was hiding, terrified and crying. She told police she was home alone when she heard a knock on the door. She observed Minor through the peephole but did not answer. A little later, she realized someone was inside. The victim hid upstairs and locked herself in the bathroom. She telephoned her mother who confirmed no one was supposed to be there and the victim called the police.

The victim heard Minor rummaging around the house. Minor banged on the locked bathroom door and then he forced his way in by breaking down the door. Minor pulled back the shower curtain, behind which the victim was hiding, and took her cellular phone. He held out a large knife and the victim was fearful he would stab her. The victim was unable to escape. Minor asked, “ ‘[D]id you call the cops?’ ” The victim denied doing so. Minor stated, “ ‘[D]on’t lie to me.’ ” The victim apologized and asked that he not hurt her. Minor ran out of the bathroom. The victim heard yelling downstairs before she was rescued by the police.

Police determined Minor entered the residence through a window at the front of the house using a ladder and by removing a screen. Minor’s backpack contained property belonging to the victim and property belonging to two other victims whose cars had been burglarized earlier in the day. Later, police found additional property from the auto burglaries in Minor’s bedroom.

During his interview with police, Minor said he was getting “ ‘a lot of deliverance,’ ” and “ ‘darkness out of his [soul].’ ” Minor stated he was previously a Satanist, he “ ‘just snapped today,’ ” and he “ ‘turned back to . . . sin.’ ” Before entering

² Like Minor, we rely on the probation report for an account of the underlying facts. The report often refers to Minor as a “non-minor” because, although he was 17 years old at the time of the incident, he turned 18 before the report was filed.

the house, Minor knocked three times and waited for a response. Minor chose the victim's residence because it was in a corner, dark, and there were no cars passing by. He cut a screen to enter. Once inside, he realized someone was home. Minor kicked down the bathroom door. Minor noted the victim was scared, and stated he would have been scared too. Minor took the victim's phone, and he admitted the knife belonged to him. He said his intent was to steal property, not to assault or hurt anyone.

Minor told the police his arrest “ ‘needed to happen . . . because there's just temptations everywhere And I just need to be isolated . . . [to] just work on myself.’ ” According to Minor, “ ‘I need to be in . . . a cage and just think about it That's good that this happened.’ ” Minor stated he was a “ ‘very bad kid’ ” before he “ ‘came to Christ.’ ” Minor described himself as “ ‘more than human,’ ” and he talked about his “ ‘third eye,’ ” and “ ‘astro-projection.’ ” He said he could leave his body. Minor came “ ‘to Christ’ ” a couple of months earlier, and it was “ ‘a calling.’ ” The police arrested Minor.

A. *The Petition, Psychological Reports and the Competency Determination*

The next day, on September 28, 2017, the Sonoma County District Attorney filed a juvenile wardship petition (Welf. & Inst. Code, § 602, subd. (a)) charging Minor with first degree residential robbery (Pen. Code, § 211; count one),³ first degree burglary (§ 459; count two), false imprisonment (§ 236; count three), assault with a deadly weapon (§ 245, subd. (a)(1); count four), and receiving stolen property with a value exceeding \$950 (§ 496, subd. (a); count five). The court ordered Minor detained. Based on defense counsel's doubt about Minor's competency, the court ordered a psychological evaluation.

1. *Dr. Schneider's Report*

A licensed psychologist, David M. Schneider, Ph.D., assessed Minor on November 2, 2017, and determined he was competent to proceed. Dr. Schneider noted Minor's parents believed he was depressed: “They stated that he reported to them that he hears voices expressing negative thoughts, telling him to do ‘bad things’. His father

³ All undesignated references are to the Penal Code.

described [Minor] as a loner, ‘obsessed’ with reading the Bible, spending much of his time in his room doing that.”

According to Dr. Schneider, Minor “presented with some odd religious thought content, at times bordering on being at the level of delusions.” Minor “had an interest in the occult prior to ‘coming to Jesus.’ ” Minor was interested in “reading about lucid dreaming, astral projection, meditation, Buddhism, Christianity and the Bible, being able to cast spirits out of others” Minor “reported conflicts between ‘urges’ and his religious beliefs or ideals.” Minor claimed he had “free will to act or not act on impulses. . . . [H]e denied any auditory hallucinations or command hallucinations.” According to Dr. Schneider, there was “no indication of delusional or magical thinking.” Minor reported alcohol and Xanax use prior to being arrested.

Dr. Schneider concluded Minor “presents with symptoms of depression and anxiety, odd thought content, and self-report of substance abuse.” Minor was competent to be adjudicated in juvenile court because he understood the nature of the charges and the range of possible dispositions, he understood the role of participants in the juvenile proceeding, and he was able to engage with his attorney.

Defense counsel was not willing to submit based on this first psychological evaluation, so a second one was conducted.

2. Dr. Speicher’s Report

A second psychologist, Gloria Speicher, Ph.D., evaluated Minor on November 15, 2017, and she concluded Minor was not competent to proceed. According to Dr. Speicher, “[t]he primary reason for [Minor’s] current deficit in competency stems from his mental disorder.” “Results of psychological evaluation suggest that [Minor] is experiencing a mental disorder that includes psychotic thinking. His inability to think rationally impairs his ability to consider the long term consequences of his decisions.”

Minor “denied compulsive behaviors but acknowledged obsessive thoughts. . . . He acknowledged perceptual (hallucinatory) disturbances and indicated that such events occur ‘lots of times’.” Minor told Dr. Speicher he hears things on “ ‘a different level’ ” than others: “ ‘It is strange. Objects look different—like spirits. When you open it (your

pineal gland), you can start to see spirits. . . . I feel like I can hear things that other people can't. It's random.' ” Minor “responded to test items indicating that he has attempted suicide in the past and currently gives thought to how he might kill himself. He responded to multiple items indicating dangerous suicidal ideation.” Minor “is preoccupied with thoughts about religion and about personal guilt for events that took place prior to the extant offense. His feelings of guilt about prior real or imagined acts spill over into the current situation” Dr. Speicher diagnosed Minor as suffering from “Major Depression, recurrent, severe, with mood-congruent psychotic features.”

Dr. Speicher opined that, because of his “mental disorder” and “extreme depression,” Minor was not competent to be adjudicated in juvenile court. Minor “acknowledged intrusive memories of past actions that he considers ‘evil’. He experiences tremendous guilt that may or may not be realistic. He holds beliefs in occult ‘powers’ such as being able to astrally project himself out of his physical setting and being able to lay hands on another person and drive the devil out of them. The guilt that he feels interferes with his reasoning and ability to separate the past from the present and to make unencumbered decisions pertaining to his future. Some of his beliefs may be considered delusional. . . . These beliefs appear to meet criteria for mood-congruent psychotic features.”

Based on these conflicting recommendations regarding Minor’s competency, the court ordered a third evaluation.

3. *Dr. Kelly’s Report*

A licensed psychologist, Kevin T. Kelly, Ph.D., examined Minor on December 15, 2017. Dr. Kelly determined that Minor “holds idiosyncratic ideas regarding the Devil, Jesus, Astral Projection, and faith healing, but those beliefs do not cause [Minor] significant impairment with respect to competence.” Dr. Kelly “did not get the impression that [Minor] had experienced psychosis, delusion, hallucination, or loss of touch with reality.” Dr. Kelly recommended “counseling treatment for depression” and assessment by a physician to determine “whether psychiatric medication was warranted. [¶] [Minor] is presently nearly age 18. If, in fact, [Minor’s] beliefs are later seen to be

early signs of future psychosis, it is sometimes the case that breaks with reality occur in the period age 18 to age 29.” Nevertheless, Dr. Kelly found Minor was competent to proceed because he understood the court, the implications of sentencing, and he was capable of rational thought and reasoning that could assist his defense counsel.

After reviewing the three psychological reports, the court found Minor competent to proceed.

B. *Jurisdiction and Disposition*

On February 2, 2018, Minor admitted to first degree burglary (§ 459) and assault with a deadly weapon (§ 245, subd. (a)(1)). The court dismissed the other charges. Prior to the disposition hearing, the probation officer filed a report.

1. *The Probation Report*

Minor’s probation officer recommended a commitment to the DJF. A number of probation officers and the division director discussed Minor’s case in February 2018. “After considering available therapeutic interventions for [Minor] at the local level, it was ultimately determined that a recommendation for [DJF] was appropriate, due to the non-minor’s role in the instant offense (unlawfully entering the home with a knife and violently confronting the victim by breaking down a door), potential for lethal harm, and the danger he presents to the public. Programming available at the local level may be insufficient to meet . . . [Minor’s] treatment, educational, and social needs. The non-minor is too impulsive to be monitored within the community, and placement within congregate care or at Probation Camp is not a viable option, given his impulsivity issues and the serious nature of the offense. Additionally, his expedited return to the community may put him at serious risk for re-offending, ultimately endangering the safety of others.”

The report stated the DJF “offers three levels of mental health care and programming, including outpatient, residential and inpatient. Upon reception, all youth are administered a set of psychological screenings and assessments. A clinician evaluates [the] youth and makes a recommendation as to the appropriate level of mental health care. Staff then uses this recommendation to place the youth in a mental health program

that matches the level of care identified by the clinician. There is no waiting list for placement at [the DJF]. The length of each program is based on the youth's individual treatment plan and response to treatment.”

With regard to alternatives to a DJF commitment, the report stated Minor was accepted in the ACT program. “However, . . . ACT staff have not read the psychological evaluation reports on [Minor], nor do they have the scope of information contained in this probation report.”

The report stated the “PACT assessment found that the non-minor was at a high risk to re-offend based on his lack of problem solving skills and anger management issues, in addition to his abuse of alcohol, marijuana and Xanax. While the protection of the community is paramount, Probation heavily considered available therapeutic interventions for [Minor] at the local level. Multiple psychological evaluations noted his depression, anxiety and behavioral issues, such as a Personality Disorder. Dr. Speicher believed the non-minor met the criteria for Major Depression, with . . . ‘mood-congruent psychotic features.’ As such, Probation facilitated . . . [Minor’s] application for Medi-Cal benefits, in order to meet the eligibility requirements, and ultimately gain acceptance for ACT services. . . . [I]n spite of the preliminary ACT acceptance, we believe treatment at the local level is insufficient to address the minor’s underlying mental health issues, while also controlling his self-reported spiritual urges to re-offend. We believe [Minor] presents a danger to the community.”

2. *The Court’s Decision to Commit Minor to the DJF*

At the disposition hearing, after hearing arguments from the district attorney, counsel for Minor, and a statement by Minor, the court committed Minor to the DJF for a period of five years and four months. In explaining its decision, the court stated: “It is true that [Minor] doesn’t have any prior record. . . . The Court did have the benefit of the mental health reports, and I did consider those. It looks like Probation, as well as the Court is willing to consider all the alternatives in this particular case. There was an evaluation by ACT, and they said that they’d be willing to work with him. . . . [But] they may not know the extent of the mental health issues that [Minor] faces and the Court

faces in trying to rehabilitate [Minor], since they didn't have the benefit of the psychological evaluations I am familiar, I have sat and continue to sit on the ACT Court. And it's the Court's belief that, [in] this particular circumstance, it would not be an appropriate request to place him in the ACT program at the local level. It just doesn't seem like there would be structured treatment, and there would be the type of treatment that the Court would require to make him successful in the community at the local level.

"Given his age of 18, it makes placement extremely difficult in regards to this particular case. The Court, certainly, would consider . . . placing him back in the home if the circumstances were different He showed rather sophisticated conduct. He went to a residence here in Sonoma County. . . . He got up on a ladder . . . , he cut a screen, and entered the residence forcibly. And at that point, allegedly, to commit a theft offense. He does enter. And as he's rummaging around . . . , it becomes known to him that somebody may be in the residence, because of noise upstairs. And if [Minor], at that point, had turned around and left the residence, then I think I would be talking about a local placement at the ACT program or some type of placement in the home with a psychological component to it.

"But once [Minor] made that decision, knowing the possibility . . . somebody was upstairs, the Court believes that the intent shifted from a theft-related offense to something extremely more serious. . . . [¶] He had two options: Once he heard the noise upstairs, he could have left But he did not do that. He advanced, approached, and displayed a knife in a rude and threatening manner in a very close proximity to the victim, who was cowering and hiding in the stall of the shower. . . . [Minor] could have reversed his conduct and not made this, in the Court's mind, a very serious offense.

"So the Court feels that, because of the facts and circumstances, that there were contributing factors that would not make this an appropriate case for a local disposition, either in the ACT program . . . or placement in the home at this time. There are other factors that influenced the Court in making the Court's decisions. The PACT assessment done by Probation does indicate that the non-minor is at a high risk to re-offend in regards to further future criminal conduct.

“The Court has reviewed and is familiar with the programs at the [DJF]. And it feels that the three levels of mental health care, which could include outpatient residential and inpatient treatment, would be appropriate The Court did become aware of the mental health issues that are before the Court, and that was based on the doctors’ reports and also the Probation report. And given those mental health concerns, the Court feels that appropriate treatment would be at the [DJF]”

DISCUSSION

I.

No Abuse of Discretion in Committing Minor to the DJF

On appeal, Minor contends his commitment to the DJF was an abuse of discretion. We disagree.

A. *Governing Law and Standard of Review*

We review the order committing Minor to the DJF “for abuse of discretion, indulging all reasonable inferences to support the juvenile court’s decision.” (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.) In doing so, we are mindful of the twofold purposes of the juvenile delinquency laws: “(1) to serve the ‘best interests’ of the delinquent ward by providing care, treatment, and guidance to rehabilitate the ward and ‘enable him or her to be a law-abiding and productive member of his or her family and the community,’ and (2) to ‘provide for the protection and safety of the public.’ ” (*In re Charles G.* (2004) 115 Cal.App.4th 608, 614–615, quoting Welf. & Inst. Code, § 202, subds. (a), (b), & (d).)

“Although the [DJF] is normally a placement of last resort, there is no absolute rule that a [DJF] commitment cannot be ordered unless less restrictive placements have been attempted. [Citations.] A [DJF] commitment is not an abuse of discretion where the evidence demonstrates a probable benefit to the minor from the commitment and less restrictive alternatives would be ineffective or inappropriate.” (*In re M.S.* (2009) 174 Cal.App.4th 1241, 1250; Welf. & Inst. Code, § 734 [no DJF commitment “unless the judge of the court is fully satisfied that the mental and physical condition and

qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided”].)

B. *Substantial Evidence of Probable Benefit*

Minor contends there was “no evidence” he would benefit from a DJF commitment. We are not persuaded. Contrary to Minor’s contention, the court did not “gloss[] over” his mental health evaluations. Instead, they were central to the court’s decision to commit Minor to the DJF.

Dr. Speicher reported that Minor suffered from a “mental disorder that includes psychotic thinking.” She diagnosed Minor as suffering from “Major Depression, recurrent, severe, with mood-congruent psychotic features.” All three psychologists agreed Minor was depressed. Dr. Schneider stated Minor “presented with some odd religious thought content, at times bordering on being at the level of delusions.” Dr. Kelly did not think Minor experienced psychosis or delusions, but noted Minor was “nearly age 18. If, in fact, [Minor’s] beliefs are later seen to be early signs of future psychosis, it is sometimes the case that breaks with reality occur in the period age 18 to age 29.”

Minor told his probation officer he needed help to prevent future criminal behavior, Minor could not say with certainty he had complete control over his actions, and he admitted that, on the date of the offense, he had “ ‘this urge to steal.’ ” Minor’s parents stated he heard voices telling him to do bad things. Minor admitted he used alcohol, marijuana and Xanax before the incident. Minor did not believe he presented a danger to others, but admitted he “ ‘definitely’ ” posed a risk on the date of the offense.

In response to concerns about Minor’s mental health, the probation report noted the DJF offered “three levels of mental health care and programming,” that Minor would receive “psychological screenings and assessments” upon reception, and that there was no waiting list for placement at the DJF. The probation officer determined “treatment at the local level is insufficient to address the minor’s underlying mental health issues, while also controlling his self-reported spiritual urges to re-offend. We believe [Minor] presents a danger to the community.”

We disagree with Minor’s claim that, in committing Minor, the court focused “solely on the gravity of” Minor’s offense. The court also focused on Minor’s mental health needs, and how he would be evaluated and treated at the DJF. Moreover, “[t]he gravity of the offense is by statute a proper consideration at disposition. (Welf. & Inst. Code, § 725.5.)” (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1330.) In addition, we discern no error in the court’s failure to expressly discuss Minor’s ADHD and his special education needs. Given the evidence in the psychological reports supporting the concern that Minor presented a danger to the community, it was reasonable for the court to conclude Minor needed “structured treatment.” (*In re Jonathan T.* (2008) 166 Cal.App.4th 474, 486 [upholding DJF commitment; there was evidence the minor “require[d] a secure setting for his rehabilitative care”].)

In arguing otherwise, Minor relies primarily on *In re Carlos J.* (2018) 22 Cal.App.5th 1. *Carlos J.* is distinguishable. The minor in *Carlos J.* was not diagnosed with a possible psychosis that presented a danger to the community. Instead, in *Carlos J.*, a psychologist diagnosed the minor as suffering from PTSD and she discouraged a DJF placement. (*Id.* at p. 8.) But here, based in particular on the psychological reports, there was sufficient evidence that treatment in a secure environment was necessary to meet “the dual concerns of the best interests of the minor and public protection.” (*In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.)

C. *Substantial Evidence that Less Restrictive Alternatives Were Inappropriate*

Nor are we persuaded by Minor’s claim that the court “failed to consider any less restrictive options.” According to Minor, “there was no evidence that a community-based program such as ACT . . . could not treat [Minor’s] risk for re-offense as effectively . . . [as the DJF].” We disagree. Based on the court’s stated familiarity with the ACT program, and the psychological reports showing Minor suffered from depression and possible psychosis, it was reasonable for the court to rule out less restrictive alternatives. (*In re M.S., supra*, 174 Cal.App.4th at p. 1250 [“there is no absolute rule that a [DJF] commitment cannot be ordered unless less restrictive placements have been attempted”].) As well as relying on the psychological reports, the court also ruled out a

home or community placement because of Minor's age, his "rather sophisticated conduct" during the subject offense, and the "high risk" Minor will re-offend. Based on this record, the DJF commitment was not an abuse of discretion. (*In re Greg F.* (2012) 55 Cal.4th 393, 417 ["Some wards, like the minor here, may be best served by the structured institutional environment and special programs available only at the DJF."].)

DISPOSITION

The judgment is affirmed.

Jones, P.J.

WE CONCUR:

Needham, J.

Burns, J.

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